IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/10/2004

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM
AND
THE HONOURABLE MR.JUSTICE C.NAGAPPAN

C.A.No.1614 of 2002

Karunamoorthy .. Appellant

-Vs-

State by Inspector of Police
Poraiyar Police Station .. Respondent

This criminal appeal is preferred under Sec.374 of the Code of Criminal Procedure against the judgment passed by the Principal Sessions Judge, Nagapattinam, dated 17.8.2001 in S.C.No.74 of 2001.

!For Appellant : Mr.V.Sairam

^For Respondent : Mr.Jayaprakash Narayanan
Government Advocate (Crl. Side)

:JUDGMENT
(Judgment of the Court was delivered by M.CHOCKALINGAM, J.)
The sole accused in a case of murder appeals against the judgment of the learned Principal Sessions Judge, Nagapattinam, wherein he was found guilty as per the charge and awarded the sentence of life imprisonment.
2. Short facts necessary for the disposal of this appeal are:
(a) The deceased Saroja is the wife of the accused. They along with their three sons and one daughter were living at Mission Street, Tharangampadi. All the three sons were employed. P.W.3 Holkarasan, is the second son. P.W.2 Kalamani, was living in the opposite house. On the date of occurrence namely 28.7.2000, all the three sons went towards their job, and the third son was returning at about 7.00 P.M. Just before the occurrence, the deceased was moving out of the house. The accused was questioning her "where are you going with full make-up". She replied that she was going to see his brother and added filthy language. Immediately, the accused slapped her. In return, she spitted on his face. Then, the accused dragged her from outside the house to inside. The incident was witnessed by P.W.2. The accused took her inside, kicked her, pushed her down, took a stone and attacked her on the back. Then, the accused turned her front, took a grinding stone and attacked her on the chest, out of which she died. P.W.2, when she was standing outside, saw P.W.3 coming towards the house. She narrated the incident and asked him to just go inside and see what had happened. When

P.Ws.2 and 3 were just nearing the house, the accused came out of the house and fled away. When P.Ws.2 and 3 went inside the house, they could see only the dead body of the deceased.

(b) The next morning i.e., on 29.7.2000, when P.W.1 Balachandran, Village Administrative Officer (V.A.O.) of Santhangudi Village, was in his office, the deceased came there and volunteered to give a confessional statement as to the occurrence. He narrated the incident. The statement of the accused was recorded by P.W.1, which is marked as Ex.P1. Along with his report Ex.P2, P.W.1 proceeded to Poraiyar Police Station and produced the accused also. P.W.11 Ravichandran, Inspector of Police, who was present that time, received Exs.P1 and P2, on the strength of which, he registered a case in Crime No.507 of 2000 against the accused under Sec.302 of I.P.C. The First Information Report Ex.P14 was despatched to the Court. The Inspector at about 7.15 A.M., made an inspection of the scene of occurrence and prepared an observation mahazar Ex.P5 and a rough sketch Ex.P15. The place of occurrence was photographed through P.W.5 Karthikeyan, a Photographer. The photos and the negatives were marked as Exs.P3 and P4 respectively. In the presence of witnesses and panchayatdars, the Investigating Officer conducted the inquest on the dead body between 9 A.M. and 12 P.M. and prepared Ex.P16 inquest report. A requisition Ex.P7 was forwarded to the Government Hospital through P.W.9 Ramalingam, Grade I Constable, who carried the dead body and handed over the same to the doctor.

(c) P.W.7 Dr.Durairaj, Civil Surgeon, attached to the Government Hospital, Porayar, on receipt of Ex.P7 requisition, conducted the autopsy on the dead body of the deceased and found the following injuries:

External Injuries:

1. An abrasion of 2 cm x 1 cm over the upper part of the left cheek.
2. An abrasion of 2 + cm x 1 + cm over the left temple region of the face.
3. An abrasion of 3 cm x 2 cm over the middle of the right cheek.
4. An abrasion of 7 cm x 2 cm over the back side of the neck.
5. An abrasion measuring 12 cm x 9 cm with diffused swelling seen over the middle of the sternal area and inner aspects of both mammary region of the chest.

Internal Injuries:

1. On examination of the chest cage, subcutaneous bruise of the soft tissues with fracture of the ribs 3, 4, 5, 6, 7 and 8 on the right side of the chest seen in the anterior axillary line with the surrounding bruising of the fractured sites. On the left side of the chest fracture of the ribs 3, 4 and 7 is the anterior axillary line with the surrounding bruising of the fractured sites seen. On examination of the right lung, areas of small lacerations with surrounding bruises seen on the anterolateral surface of the middle and lower lobes corresponding to the fractured rib sites. 100 ml. of fluid blood present in the right pleural cavity. On examination of the left lung small lacerations with surrounding bruises seen on the anterolateral surface of the both lobes corresponding to the fractured rib sites. 50 ml. of fluid blood present in the left pleural cavity. All the above injuries are antemortem in nature.

The Doctor had issued Ex.P8 postmortem certificate, wherein he has opined that the deceased would appear to have died of injuries to both lungs - vital organs.

(d) From the place of occurrence, the Investigating Officer recovered M.O.1 a granite stone and M.O.2 ammi kulavi. The accused was remanded to judicial custody. A requisition was given to the concerned Court for sending the material objects recovered from the place of occurrence and from the dead body to the Forensic Sciences Department for analysis. Accordingly, they were subjected to chemical analysis, and the Chemical Analyst's report Ex.P11 and the Serologist's report Ex.P12 were received and placed before the Court. On completion of the investigation, he laid the final report before the Court.

3. In order to prove the charge levelled against the accused/ appellant, the prosecution marched 11 witnesses and relied on 16 exhibits and 8 material objects. On completion of the evidence on the side of the prosecution, the accused was questioned under Sec.313 of the Code of Criminal Procedure as to the incriminating circumstances found in the evidence of the prosecution witnesses. He denied the same as false; but, he would add that at the time of the occurrence, he found his wife in a compromising position with his elder brother; and that due to provocation, he attacked her with a stone. No defence witnesses were examined. The trial Court, on scrutiny of the materials available and hearing the submissions made, found him guilty as per the charge and awarded him life imprisonment, which is being challenged before this Court.

4. The learned Counsel appearing for the appellant/accused while advancing his arguments, made the following submissions:

In the instant case, the prosecution had no direct evidence, and hence, the prosecution was to prove the case only on the circumstantial evidence. But, the prosecution has miserably failed to prove any one or all the circumstances. The learned Counsel would further caution that the circumstances should not only be shown, but also be proved, and it should make out a complete chain, and only then, the prosecution case could be believed. In the instant case, the prosecution has failed to do so. As per the prosecution case, the occurrence has taken place at about 7.00 P.M.; but, no one has come forward to give a complaint. The alleged extra-judicial confession made by the accused before P.W.1 V.A.O., is shrouded with suspicious circumstances, and hence, the lower Court should not have believed the same. Apart from that, even assuming that the facts of the prosecution case are proved, it would not come within the ambit of murder; but, it would only fall short of murder, and it was a culpable homicide, since the act was done due to sudden provocation. Even as per the evidence of P.Ws.2 and 3, there was a quarrel preceding the occurrence, and apart from that, she has also spitted on the face of the accused, and on account of sudden provocation, he has attacked her. Hence, the judgment of the lower Court finding him guilty under the charge of murder has got to be set aside, and the above circumstance has got to be considered by this Court.

5. In answer to the above, the learned Government Advocate (Criminal Side) would submit that in the instant case, the prosecution has proved all the circumstances; that apart from that, at the time of questioning under Sec.313 of Cr.P.C., the appellant/accused has admitted that he has done the same, but due to sudden provocation; that the accused appeared before P.W.1, the V.A.O., and gave an extra-judicial confessional statement narrating the incident, which was also recorded by the V.A.O.; that it is pertinent to point out that this extrajudicial confessional statement given and recorded, has become the basis for the registration of the case, and thus, it has got to be

given credence; that the lower Court was perfectly correct in finding him guilty as per the charge of murder, since he has dragged her inside and attacked her with a plan of murdering her, and under the circumstances, the appeal has got to be dismissed as one without merits.

6. This Court paid its full attention on the submissions made and had a thorough scrutiny of the available materials.

7. It is not in dispute that the deceased Saroja died out of homicidal violence. P.W.7, the Doctor, on requisition by the Investigating Officer under Ex.P7, has conducted the autopsy on the dead body of the deceased and has given a certificate under Ex.P8 stating that the deceased would appear to have died of injuries to both lungs namely vital organs. It is pertinent to point out that either before the trial Court or before this Court, the factum that she died out of homicidal violence is not disputed by the appellant. Hence, the Court feels no difficulty in recording a finding that she died on account of homicidal violence.

8. In the instant case, it is true that the prosecution had no direct evidence; but, the prosecution rested its case on the circumstantial evidence. As rightly pointed out by the learned Counsel for the appellant, the Court has with full caution scrutinised the evidence available. P.W.2 is living in the opposite house. At the time of occurrence, when the deceased came out of the house, the accused asked her "where she goes with full make-up". At that time, a quarrel arose between them, and she answered in filthy language. When the accused gave a slap, she spitted on his face, and thus, it has provoked him. All these incidents have been clearly narrated by P.W.2. At this juncture, it has to be pointed out that the defence story before the lower Court that she was found in a compromising position with the brother of the accused has got to be rejected as one false, in view of the evidence of P.W.2 stated above. It would be quite evident from the evidence of P.W.2 that it was the accused who dragged her inside, and when P.W.3 came over there, she narrated the same, and P.Ws.2 and 3 found the accused coming out of the house. It is pertinent to note that at the time of occurrence, except the accused and the deceased, no one else was inside the house. When P.Ws.2 and 3 entered into the house, they saw only the dead body, and thus, the whole occurrence has taken place within a short span of time. Therefore, it would be quite clear that none else, except the accused, could have committed the offence.

9. At the time of observation, the Investigating Officer has recovered M.Os.1 and 2, stone and grinding stone respectively, and they were subjected to chemical analysis. After analysis, they were found to contain human blood. Apart from that, the clothes recovered from the dead body of the deceased were also found to contain human blood. It is true that Ex.P12 Serologist's report does not speak about the blood group. Even then, the said report would reveal that human blood was found on the stone which was recovered from the place of occurrence. In the instant case, the accused at the time of questioning under Sec.313 of Cr.P.C., has also spoken to the fact that due to sudden provocation, he has committed the act, which, in the opinion of this Court, is relevant. In such circumstances, this Court is of the considered opinion that the prosecution has not only placed before the trial Court necessary circumstances, but has also proved the same, and thus, it would be clear from the evidence available that it was the accused, who caused her death by attacking her with a stone.

10. Now, the question that would arise for consideration by this

Court is whether the act of the accused would fall within the ambit of murder, warranting a punishment of life imprisonment or it would fall short of murder as one contended by the learned Counsel for the appellant. From the available evidence, it would be abundantly clear that there was a quarrel between the accused and the deceased, and following the same, he gave her a slap; but, she has not only talked in filthy language, but also spitted on his face.
Further, the accused dragged her inside and attacked her with a stone, and thus, from the available evidence, it would be clear that there was sudden provocation, due to which he has attacked her, and when she spitted on the face, it became uncontrollable, and following the same, the occurrence had happened. It is quite natural for any reaso nable man to get provoked by such a conduct of his wife. Therefore, this Court is of the view that the act of the accused would not fall within the ambit of murder, and it would be a culpable homicide, which would fall within the Exception I to Sec.300 of I.P.C.
11. Under the above stated circumstances, the accused is found guilty under Sec.304 Part I of I.P.C. instead of 302 of I.P.C. as found by the trial Court. Coming to the question of punishment, this Court is of the view that awarding of rigorous imprisonment for seven years would meet the ends of justice. Hence, the appellant/accused is sentenced to undergo rigorous imprisonment for seven years.
12. In the result, the judgment of the lower Court is set aside, and this criminal appeal is allowed to the extent indicated above.

Index: yes
Internet: yes

To:

1. The Principal Sessions Judge, Nagapattinam
2. The Superintendent, Central Prison, Cuddalore.
3. The Public Prosecutor, High Court, Madras.
4. The Inspector of Police, Poraiyar Police Station.

nsv/

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